

### **III. REMARKS**

#### **A. Office Action - Detailed Action**

##### **- Claim Rejections - 35 USC § 112**

Claims 1-4 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-4 included limitations for which there was insufficient antecedent basis.

##### **- Double Patenting Rejection**

Claims 1-4 were also rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim (FIGS. 7-8) of U.S. Patent No. D451,204.

In response to the above-noted rejections, claims 1-4 have been cancelled, and the rejection of claims 1-4 are no longer applicable. As discussed below, new claims 5-14 are believed to meet the requirements of 35 U.S.C. § 112, second paragraph, and to be patentably distinguishable over D451,204 and therefore preclude application of the judicially created doctrine of obviousness-type double patenting.

#### **B. Amendments to the Claims**

Pursuant to the revised amendment practice effective July 30, 2003, a complete listing all claims presented in the application is provided above, with current claim status, the text of all claims currently under examination, and revision markings to show the changes to all currently amended claims as revised from the immediately prior version thereof.

As indicated above, claims 1-4 have been cancelled in response to the above-noted rejections, thereby removing the rejections.

Applicants believe new claims 5-14 meet the requirements of 35 U.S.C. § 112, second paragraph, and that proper antecedent basis is provided for all limitations in the claims. New claims 5-14 are fully supported by the original specification and drawings and do not present new matter into the application.

Applicants further believe new claims 5-14 are not obvious in view of, or an obvious variation of the invention disclosed in D451,204, and are therefore patentably distinguishable. Consequently, applicants respectfully submit the judicially created doctrine of obviousness-type double patenting is not applicable to claims 5-14.

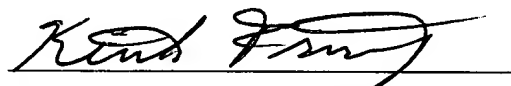
The '204 Patent is for an ornamental design of an anti-perching device. This fact, alone, does not make obvious claim 5 which is also directed to a anti-perching device; there are many known anti-perching devices. Although the drawings in the present application include figures similar to in the '204 Patent, the disclosure and new claim 5 are directed to an anti-perching device beyond the ornamental design of the '204 Patent. The present specification discloses an anti-perching device with "one or more sides" and therefore may be only one side "inclined upwardly from the legs to cover the horizontal surfaces of the frame and present an inclined surface(s) and an upper peak configuration shaped to discourage perching thereon" (Spec., p. 5, lines 24-27; see also p. 10, lines 6-9 "at least one elongated continuous side member that extends upwardly therefrom at an angle to obscure the upper horizontal surfaces of the frame members and preclude perching thereon"). This aspect of the invention is further discussed on p. 15, lines 3-4 in an alternate embodiment with "a single angled side and a vertical side. The '204 Patent discloses an ornamental design with two inclined sides. The present specification also discloses a stop mechanism for vertical positioning of the device on the frame member including a stop profile protruding inwardly from the above-mentioned vertical side for vertical positioning purposes on the frame member (Spec., p 10, lines 4-6). This stop mechanism is not disclosed, suggested or obvious from the '204 Patent. The present specification further discloses that the peak structure may be shaped alternately from the configuration shown in the drawings, and therefore alternately from the design of the '204 Patent. Each of these aspects of the present

invention are provided for in claim 5. For these and other reasons, applicant therefore believes that claim 5, as well as claims 6-14 depending therefrom, are not obvious from and are patentably distinguishable over the '204 Patent.

In view of the foregoing, Applicants believe claims 5-14 pending in the application are in condition for allowance.

If the Examiner, after considering this application in light of the present amendment, feels that a response to the amendment should be a final rejection of the application, and if he feels that a discussion with applicant's attorney might serve as a means of avoiding such a rejection and advancing the prosecution of this application to a favorable termination, he is respectfully requested to phone the undersigned attorney and to accord said attorney an opportunity of discussing this application before same is disposed of by a final rejection. The Examiner is assured of complete cooperation in the event that such courtesy is extended.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith Frantz", is written over a horizontal line.

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